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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,991	06/20/2001	Bruce H. Levin	10527/11	5652
23838	7590	06/02/2004	EXAMINER	
KENYON & KENYON 1500 K STREET, N.W., SUITE 700 WASHINGTON, DC 20005			PEFFLEY, MICHAEL F	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/883,991

Applicant(s)

LEVIN, BRUCE H.

Examiner

Michael Peffley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 22 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-59, 61, 62 and 64-72 is/are pending in the application.
- 4a) Of the above claim(s) 1-48, 64 and 65 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 49-59, 61, 62 and 66-72 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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Applicant's arguments, received March 22, 2004 have been fully considered by the examiner the following is a complete response to the communication of March 22, 2004.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Election/Restrictions***

Claims 1-48, 64 and 65 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 5.

***Claim Rejections - 35 USC § 102***

Claims 49-54, 56-59, 66 and 68-72 are rejected under 35 U.S.C. 102(e) as being anticipated by Ishikawa et al ('206).

The Ishikawa et al reference discloses a medical label system which includes a label (15) including an integrated circuit which identifies a medical product by transmitting a radio frequency identifier. The system includes a computer system (17) which receives the information and tracks the location of the medical product. The label may be used to identify and track any number of medical products ranging from medications to surgical devices such as gloves, instruments and sponges (see Figures). The label is made from a variety of materials which would give it properties such as temperature resistance and water resistance (col. 3, lines 15-45). The integrated circuit is shown in Figure 6 and includes an analog front end (i.e. coil and RF amplifier) with a controller (83) and a memory (79) coupled to the front end.

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 54-59, 61, 62 and 69-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa et al ('206).

As addressed previously, Ishikawa et al disclose a medical label system which is used to identify and track various medical and non-medical products. Ishikawa et al disclose various materials for the label, but fail to expressly point out that the materials are temperature resistant, water resistant and/or shock resistant. The examiner maintains that due to the materials used to create the label, it would obviously, if not inherently, include these properties. Also, Ishikawa et al disclose several products which are labeled including prescription medication and medical devices, but fail to specifically disclose the use of the label to identify blood products. It is the examiner position that one of ordinary skill in the art would recognize that such a label may be used to identify and track any product, including blood products, and would also obviously recognize the various data which may be saved by such a label.

To have provided the Ishikawa et al label on any medical or non-medical product, including blood products, to identify and track the product would have been an obvious consideration for one of ordinary skill in the art.

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Claim 67 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa et al ('206) in view of the teaching of Imaichi et al ('747).

While Ishikawa et al disclose an integrated circuit having an analog front end located on a label, there is no specific teaching or disclosure that the label includes an LC circuit.

The examiner maintains that the use of LC circuits in integrated circuit designs is very well known. Further, Imaichi et al specifically teach that it is known to provide RFID labels with an LC circuit on the tag (see Abstract).

To have provided the Ishikawa et al label with an LC circuit on the label for communicating data would have been an obvious consideration for one of ordinary skill in the art, particularly since Imaichi et al teach that it is known to use LC circuits on RFID tags.

### ***Response to Arguments***

Applicant's arguments filed March 22, 2004 have been considered but are not persuasive.

Applicant asserts that the Ishikawa et al reference fails to disclose a computer system including a set of instructions capable of being executed by a processor to receive the RFID to receive the RFID and to "track a location of the medical product" based on the RFID. In particular, applicant points out in the Ishikawa et al reference where it states that the device is used to inventory medical instruments before and after surgery. The examiner maintains that such an inventory does "track a location" of the medical product as recited in the claims. Column 8, lines 26-41 specifically disclose

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that a surgery site may be scanned to locate the medical instrument. This is deemed to read on the limitation of tracking a location since the scanner would locate the device anywhere within the scanned area. Column 10, lines 20-48 are another recitation of medical devices being tracked. The scanner and RFID unit track the location of the medical device (i.e. in the operating room, not in the operating room). The system clearly includes a computer (17) with a microprocessor programmed to identify the RFID and, therefore, track its location. It is apparent that applicant's arguments are implying that the Ishikawa et al device can not remotely track the location of a medical device without the scan unit being in the immediate vicinity (similar to a GPS tracking system). While the examiner agrees that the Ishikawa et al reference may not operate in the exact same manner as applicant's invention, it still does identify RFID tags located on medical devices and is therefore capable of keeping track of the location of the device (i.e. in the operating room, in a garbage bag, etc.) as broadly recited in the claims.

Applicant's arguments with respect to the 35 USC 103 rejections remain centered on the premise that the Ishikawa et al device does not "track a location of the medical product". Again, the examiner maintains that as broadly recited, the Ishikawa et al system does track a location of the tagged medical product/device and the rejections are maintained.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Flach et al (6,589,170) discloses a medical telemetry system

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which allows medical devices, patients, etc. to be tracked within the hospital. In particular, patient location may be monitored by the system.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

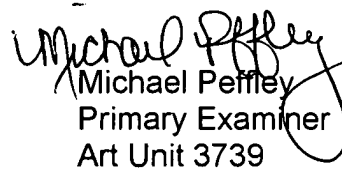
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Peffley whose telephone number is (703) 308-4305. The examiner can normally be reached on Mon-Fri from 6am-3pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (703) 308-0994. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Michael Petley  
Primary Examiner  
Art Unit 3739

mp  
May 28, 2004